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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/597,448	06/20/2000	William S. Gatley	FASV-137-C1	6244

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09/24/2002

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EXAMINER

CIRIC, LJILJANA V

ART UNIT

PAPER NUMBER

3743

DATE MAILED: 09/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/597,448

Applicant(s)  
Gatley

Examiner  
Ljiljana V. Ciric *AVC*

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Aug 23, 2002
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 3, 5-8, and 10-12 is/are pending in the application.
- 4a) Of the above, claim(s) none is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3, 5-8, and 10-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on Aug 23, 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☒ Interview Summary (PTO-413) Paper No(s). 11
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

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## DETAILED ACTION--FINAL REJECTION

### *Response to Amendment*

1. This Office action is in response to the telephone inquiry of August 21, 2002 and to the amendment and arguments filed on August 23, 2002.
2. Claims 3, 5 through 8, and 10 through 12 remain in the application as amended.
3. Applicant's request for reconsideration of the rejection of claims 3 through 12 under 35 U.S.C. 102(e) as being anticipated by *Gatley et al.* (U.S. Patent No. 6,231,311 B1) as presented in the last Office action is persuasive. The finality of the previous Office action is therefore hereby withdrawn.

### *Response to Arguments*

4. Applicant's arguments filed on August 21, 2002 with regard to the rejection of claim 7 as being anticipated by *Pfister et al.* under 35 U.S.C. 102(b) have been fully considered but they are not persuasive. In particular, in response to applicant's argument that the *Pfister et al.* reference fails to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the elimination of the second cooling impeller and the use of a single impeller) are not recited in the rejected claim. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

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Applicant's arguments with respect to claim 7 are furthermore moot in view of the new ground(s) of rejection.

Applicant's amendments and arguments have, however, successfully, overcome both the examiner's objection to the oath/declaration, to the drawings, and to the specification as cited in the previous Office action, as well as the examiner's rejections of the claims under 35 U.S.C. 112, first and second paragraphs, and of claims 3 through 12 under 35 U.S.C. 102(e) as being anticipated by *Gatley et al.* ('311) as also cited in the previous Office action.

***Priority***

5. If applicant desires priority under 35 U.S.C. 119(e) based upon a previously filed copending application, specific reference to the earlier filed application must be made in the instant application. This should appear as the first sentence of the specification following the title, preferably as a separate paragraph. The status of nonprovisional parent application(s) (whether patented or abandoned) should also be included. If a parent application has become a patent, the expression "now Patent No. \_\_\_\_\_" should follow the filing date of the parent application. If a parent application has become abandoned, the expression "now abandoned" should follow the filing date of the parent application.

If the application is a utility or plant application filed on or after November 29, 2000, any claim for priority must be made during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. See 37 CFR 1.78(a)(2) and (a)(5). This time period is not extendable and a

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failure to submit the reference required by 35 U.S.C. 119(e) and/or 120, where applicable, within this time period is considered a waiver of any benefit of such prior application(s) under 35 U.S.C. 119(e), 120, 121 and 365(c). A priority claim filed after the required time period may be accepted if it is accompanied by a grantable petition to accept an unintentionally delayed claim for priority under 35 U.S.C. 119(e), 120, 121 and 365(c). The petition must be accompanied by (1) a surcharge under 37 CFR 1.17(t), and (2) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) or (a)(5) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional. The petition should be directed to the Office of Petitions, Box DAC, Assistant Commissioner for Patents, Washington, DC 20231.

#### ***Drawings***

6. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on August 23, 2002 have been approved by the examiner with regard to content but contain informalities which are objected to by the Draftsperson under 37 CFR 1.84 as noted in greater detail on the attached Form PTO 948.

A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

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***Claim Rejections - 35 U.S.C. § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

(f) he did not himself invent the subject matter sought to be patented.

NOTE: The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

8. Claims 3, 5 through 8, and 10 through 12 are rejected under 35 U.S.C. 102(e) as being anticipated by *Connor et al.*

*Connor et al.* discloses a blower fan assembly for removing combustion by-products and flue gases from a furnace essentially as claimed. For example, *Connor et al.* discloses: a motor 32 with a motor housing including at least one vent aperture [see Figure 1] for allowing external cooling air to enter the motor housing; an impeller or blower housing 16 mounted or secured to the motor housing, the impeller housing including an inlet port or hub clearance 76; an impeller or blower fan 20 enclosed within the impeller or blower housing 16 and mounted to motor shaft 36

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extending through the inlet port or hub clearance 76, the impeller or blower having a back plate or fan disc 62 and a plurality of fins or vanes 64, wherein the back plate or fan disc 62 includes a plurality of apertures or openings 80 [see Figure 4]; and, an outlet pipe or exhaust conduit 42.

The reference thus reads on the claims.

9. Claims 7, 8, 11, and 12 are rejected under 35 U.S.C. 102(f)/103(a) because the applicant did not invent the claimed subject matter. Specifically, claims 7, 8, 11, and 12 are directed to an invention not patentably distinct from that of claims 1, 3, 14, 16, 18, and 25 of commonly assigned *U.S. Patent No. 6,231,311 B1 (of record)*, yet *U.S. Patent No. 6,231,311 B1* has a different inventive entity from that of the instant invention.

#### ***Double Patenting***

10. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground

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provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

11. Claims 7, 8, 11, and 12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3, 14, 16, 18, and 25 of *U.S. Patent No. 6,231,311 B1 (of record)*. Although the conflicting claims are not identical, they are not patentably distinct from each other because the only differences between the claims of the instant application and those of the abovementioned patent are the following: (a) the application claims recite an impeller having a plurality of fins (i.e., airfoils or blades), whereas the patent claims more broadly recite just an impeller which, by definition, comprises at least one fin (i.e., airfoil or blade); and, (b) the application claims recite the backplate as having a plurality of apertures, whereas the patent claims recite the backplate as having at least one aperture (i.e., one or more apertures). Nevertheless, duplicating parts (i.e., fins or apertures) for a multiplied effect is not the type of innovation for which a patent monopoly is to be granted. Thus, it would have been obvious to one skilled in the art at the time of invention to both to change the number of fins (i.e., blades or airfoils) of an impeller in order to effect a desired change in the working surface area of the impeller so as to effect the performance of the impeller in a given desired manner and also to change the number of apertures in the backplate in order to cause a corresponding desired change in the cooling air flow rate therethrough.



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12. Claims 7, 8, 11, and 12 are directed to an invention not patentably distinct from claims 1, 3, 14, 16, 18, and 25 of commonly assigned *U.S. Patent No. 6,231,311 B1 (of record)*. Specifically, the claims are not patentably distinct from each other because the only differences between the claims of the instant application and those of the abovementioned patent are the following: (a) the application claims recite an impeller having a plurality of fins (i.e., airfoils or blades), whereas the patent claims more broadly recite just an impeller which, by definition, comprises at least one fin (i.e., airfoil or blade); and, (b) the application claims recite the backplate as having a plurality of apertures, whereas the patent claims recite the backplate as having at least one aperture (i.e., one or more apertures). Nevertheless, duplicating parts (i.e., fins or apertures) for a multiplied effect is not the type of innovation for which a patent monopoly is to be granted. Thus, it would have been obvious to one skilled in the art at the time of invention to both to change the number of fins (i.e., blades or airfoils) of an impeller in order to effect a desired change in the working surface area of the impeller so as to effect the performance of the impeller in a given desired manner and also to change the number of apertures in the backplate in order to cause a corresponding desired change in the cooling air flow rate therethrough.

13. The U.S. Patent and Trademark Office normally will not institute an interference between applications or a patent and an application of common ownership (see MPEP § 2302).

Commonly assigned *U.S. Patent No. 6,231,311 B1 (of record)*, discussed above, would form the basis for a rejection of the noted claims under 35 U.S.C. 103(a) if the commonly assigned case qualifies as prior art under 35 U.S.C. 102(f) or (g) and the conflicting inventions were not

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commonly owned at the time the invention in this application was made. In order for the examiner to resolve this issue, the assignee is required under 37 CFR 1.78© and 35 U.S.C. 132 to either show that the conflicting inventions were commonly owned at the time the invention in this application was made or to name the prior inventor of the conflicting subject matter. Failure to comply with this requirement will result in a holding of abandonment of the application.

A showing that the inventions were commonly owned at the time the invention in this application was made will preclude a rejection under 35 U.S.C. 103(a) based upon the commonly assigned case as a reference under 35 U.S.C. 102(f) or (g), or 35 U.S.C. 102(e) for applications filed on or after November 29, 1999.

14. Claims 3, 5 through 8, and 10 through 12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2 and 20 of *U.S. Patent No. 6,296,478 B1* in view of *Connor et al.* Although the conflicting claims are not identical, they are not patentably distinct from each other because the only difference between the claims of the instant application and those of the abovementioned patent is that the claims of the instant application additionally recite at least one aperture in a back plate of the fan impeller such that cooling air can pass through the same or the step of forming at least one such aperture. Nevertheless, *Connor et al.* teaches providing at least one pressure opening or aperture in the back plate of the impeller of a furnace exhaust fan or blower in order to ensure proper operation of the exhaust fan and to prevent the build up of combustible gases in the furnace. It would thus have been obvious to one skilled in the art at the time of invention to modify the invention

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disclosed in claims 2 and 20 of *U.S. Patent No. 6,296,478 B1* by adding at least one opening or aperture to the back plate of the exhaust fan impeller in order to facilitate proper operation thereof.

15. Claims 3, 5 through 8, and 10 through 12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 through 14 of *U.S. Patent No. 6,318,358 B1*. Although the conflicting claims are not identical, they are not patentably distinct from each other because the only differences between the claims of the instant application and those of the abovementioned patent are the following: (a) the patent claims broadly recite the motor casing as being in communication with the blower housing, whereas the application claims recite the impeller housing as being mounted or secured to the motor housing; and, (b) the application claims recite the backplate as having a plurality of apertures for drawing cooling air therethrough, whereas the patent claims recite the backplate as having one aperture (i.e., the shaft hole with the perimeter edge spaced from but adjacent to the motor shaft to allow the cooling air to flow therethrough). Nevertheless, with regard to the latter, duplicating parts (i.e., holes or apertures) for a multiplied effect is not the type of innovation for which a patent monopoly is to be granted. Thus, it would have been obvious to one skilled in the art at the time of invention to change the number of apertures or holes in the backplate in order to cause a corresponding desired change in the cooling air flow rate therethrough. With regard to the former, directly or indirectly mounting or securing the impeller housing to the motor housing or casing is an obvious design variation of ensuring that the two housings, each with a corresponding

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aperture, are in flow communication with one another. Generally, rearrangement of parts is also not innovative unless unexpected results are obtained thereby. Thus, it would have similarly have been obvious to one skilled in the art at the time of the invention to mount or secure the impeller housing to the motor housing or casing in order to ensure that the corresponding flow apertures are properly aligned to allow cooling air flow to pass therethrough with minimal obstruction, for example.

### *Conclusion*

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

*Mellin, Vaughn, Guzorek (both references), Zaniewski, Anstine et al., and Core* disclose fan assemblies including vented impeller and/or motor housings.

*Stickford et al.* shows a furnace with multiple venting options including a dilution air inlet through which air flow is controlled via an orifice plate disposed between a mixing chamber and a draft blower.

*Stewart et al., Gatley, Jr. ('431), Gatley, Jr. ('123), and Stewart ('512)* are additional patents related to the instant application.

*Stewart (US 2001/0038794 A1)* and *Gatley, Jr., et al. (US 2002/0014233 A1)* are published applications related to the instant application.

17. Please note that, due to the number and variety of patents and co-pending applications related to the instant application which have been discovered by the examiner, applicant is

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respectfully reminded of the duty to disclose known information which is material to patentability in accordance with 37 CFR 1.56. Applicant is also requested to inform the examiner whether any additional similarly relevant co-pending applications or newly issued patents exist, and, if so, to identify these promptly.

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ljiljana (Lil) V. Ciric, whose telephone number is (703) 308-3925. While she works a flexible schedule that varies from day to day and from week to week, Examiner Ciric may generally be reached at the Office during the work week between the hours of 10 a.m. and 6 p.m. ET.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett, can be reached on (703) 308-0101. The fax phone number is (703) 305-3463.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

lvc

September 20, 2002

  
**LILJANA CIRIC**  
**PATENT EXAMINER**  
**(PRIMARY)**

## Interview Summary

Application No.  
09/597,448

Applicant(s)  
Gatley

Examiner  
Ljiljana V. Ciric

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3743



All participants (applicant, applicant's representative, PTO personnel):

(1) Ljiljana V. Ciric

(3) \_\_\_\_\_

(2) Joseph D. Kuborn, Reg. No. 40,689

(4) \_\_\_\_\_

Date of Interview Aug 21, 2002

Type: a) ☒ Telephonic      b) ☐ Video Conference  
c) ☐ Personal [copy is given to 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes      e) ☒ No. If yes, brief description:

Claim(s) discussed: 3-12

Identification of prior art discussed:

Gatley et al. (U.S. Patent 6,231,311 B1)--of record; Pfister et al. (U.S. Patent 3,782,303)--of record

Agreement with respect to the claims f) ☐ was reached. g) ☐ was not reached. h) ☒ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments:

Attorney Kuborn telephoned Examiner Ciric to order to inquire as to how best to overcome the objections to the drawings (including the new matter objection) as cited in the previous Office action; Examiner Ciric gave preliminary approval to his proposal to replace the objected to drawings with a cleaned up version of the originally filed drawings. Also, the prior art rejections of the claims were briefly discussed, during which discussion Attorney Kuborn pointed out that the Gatley et al. reference (see above) appears to have been improperly applied under 35 U.S.C. 102(e) since the instant application claims priority to a provisional application which antedates the Gatley et al. reference. Examiner Ciric noted that, this being the case, upon receipt of a proper after-final amendment, the examiner would permit the amendment to be entered and either allow the application or withdraw the finality of the previous Office action and write another final rejection in response to the amendment, as appropriate.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

i) ☒ It is not necessary for applicant to provide a separate record of the substance of the interview (if box is checked).

Unless the paragraph above has been checked, THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

Examiner's signature, if required